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 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 OAKLAND DIVISION

11 SECURITIES AND EXCHANGE
 12 COMMISSION,

13 Plaintiff,

14 vs.

15 MARK LESLIE, KENNETH E. LONCHAR,
 16 PAUL A. SALLABERRY, MICHAEL M.
 CULLY, and DOUGLAS S. NEWTON,

17 Defendants.

Case No. 5:07-cv-03444-CW

**FINAL JUDGMENT AS TO
 DEFENDANT KENNETH E.
 LONCHAR**

Hon. Claudia Wilken

18 The Securities and Exchange Commission having filed an Amended Complaint and
 19 Defendant KENNETH E. LONCHAR, having entered a general appearance; consented to the
 20 Court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of
 21 this Final Judgment without admitting or denying the allegations of the Amended Complaint
 22 (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right
 23 to appeal from this Final Judgment:
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I.

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2 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and
3 Defendant's agents, servants, employees, attorneys, and all persons in active concert or
4 participation with him who receive actual notice of this Final Judgment by personal service or
5 otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section
6 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule
7 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of
8 interstate commerce, or of the mails, or of any facility of any national securities exchange, in
9 connection with the purchase or sale of any security:
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- 11 (a) to employ any device, scheme, or artifice to defraud;
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13 (b) to make any untrue statement of a material fact or to omit to state a material fact
14 necessary in order to make the statements made, in the light of the circumstances
15 under which they were made, not misleading; or
16 (c) to engage in any act, practice, or course of business which operates or would
17 operate as a fraud or deceit upon any person.
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20 II.

21 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
22 is liable for disgorgement and prejudgment interest of \$300,000, representing profits gained as a
23 result of the conduct alleged in the Amended Complaint and prejudgment interest thereon, and a
24 civil penalty in the amount of \$100,000 pursuant to Section 21(d) of the Exchange Act. Defendant
25 shall satisfy this obligation by paying \$400,000 within 14 days after entry of this Final Judgment
26 to the Clerk of this Court, together with a cover letter identifying Defendant's name as a
27 defendant in this action; setting forth the title and civil action number of this action and the name
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1 of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant
2 shall simultaneously transmit photocopies of such payment and letter to the Commission's
3 counsel in this action. By making the foregoing payments, Defendant relinquishes all legal and
4 equitable right, title, and interest in such funds, and no part of the funds shall be returned to
5 Defendant. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28
6 U.S.C. § 1961.
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8 The Clerk shall deposit the funds into an interest bearing account with the Court Registry
9 Investment System ("CRIS") or any other type of interest bearing account that is utilized by the
10 Court. These funds, together with any interest and income earned thereon (collectively, the
11 "Fund"), shall be held in the interest bearing account until further order of the Court. In
12 accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative
13 Office of the United States Courts, the Clerk is directed, without further order of this Court, to
14 deduct from the income earned on the money in the Fund a fee equal to ten percent of the income
15 earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the
16 United States.
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18 The Commission may by motion propose a plan to distribute the Fund subject to the
19 Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair
20 Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any
21 such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this
22 Judgment shall be treated as penalties paid to the government for all purposes, including all tax
23 purposes. To preserve the deterrent effect of the civil penalty, Defendant shall not, after offset or
24 reduction of any award of compensatory damages in any Related Investor Action based on
25 Defendant's payment of disgorgement in this action, argue that he is entitled to, nor shall he
26 further benefit by, offset or reduction of such compensatory damages award by the amount of any
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1 part of Defendant's payment of a civil penalty in this action ("Penalty Offset"). If the court in any
2 Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry
3 of a final order granting the Penalty Offset, notify the Commission's counsel in this action and
4 pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the
5 Commission directs. Such a payment shall not be deemed an additional civil penalty and shall
6 not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes
7 of this paragraph, a "Related Investor Action" means a private damages action brought against
8 Defendant by or on behalf of one or more investors based on substantially the same facts as
9 alleged in the amended complaint in this action.
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13 III.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is
15 incorporated herein with the same force and effect as if fully set forth herein, and that Defendant
16 shall comply with all of the undertakings and agreements set forth therein.
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18 IV.

19 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain
20 jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.
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22 Dated: July 20, 2012

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25 HON. CLAUDIA WILKEN
26 UNITED STATES DISTRICT JUDGE
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